

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE: WORLD TRADE CENTER LOWER
MANHATTAN DISASTER SITE LITIGATION

21 MC 102 (AKH)

Mieczyslaw Zygmunt (09CV0679)

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DEFENDANTS' STATEMENT OF UNDISPUTED FACTS

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56.1, Defendants in the 21 MC 102 respectfully submit this Statement of Undisputed Facts in support of Defendants' Joint Statute of Limitations Motion for Summary Judgment:

I. PLAINTIFF'S ALLEGED INJURIES.

1. Plaintiff Mieczyslaw Zygmunt ("Plaintiff") submitted the following responses to TCDI in Field 29, which asks "For which diagnosed condition(s)/injury(s)/disease(s) does P seek recovery?": interstitial lung disease ("ILD"), asthma, reactive airways dysfunction syndrome ("RADS"), chronic bronchitis, sinusitis, rhinitis, chronic nasopharyngitis, lung nodules, sleep apnea, GERD, gastritis, coronary artery disease, moderate obstruction/mild restriction, a deviated nasal septum, and post-traumatic stress disorder ("PTSD"). (Ex. B,¹ TCDI Report at 2.)
2. On August 20, 2013, Plaintiff discontinued his claims against defendants to the extent those claims pertain to, or seek recovery for, any and all cardiology-related, or heart-related, injuries, conditions or diseases, including but not limited to coronary artery disease. (Ex. D, Stipulation of Discontinuance.)

II. SYMPTOMS OF PLAINTIFF'S ALLEGED INJURIES.

3. A deviated septum can be caused by a condition present at birth or an injury to the nose that causes the nasal septum to be moved out of position. (Ex. E, Causes of Deviated Septum, Mayo Clinic.)
4. Symptoms of ILD include shortness of breath and coughing. (Ex. O, Symptoms of ILD, Mayo Clinic.)
5. Symptoms of asthma include shortness of breath, coughing or wheezing, chest pain, and trouble sleeping. (Ex. P, Symptoms of Asthma, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 278.)
6. Symptoms of RADS include shortness of breath, and coughing or wheezing. (Ex. Q,

¹ Unless otherwise specified, all references to Exhibits herein refer to the lettered exhibits attached to the Declaration of Brett J Broadwater, filed concurrently herewith.

Reactive airway disease: Is it asthma?, Mayo Clinic; Ex. P, Symptoms of Asthma, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 279.)

7. Symptoms of bronchitis include coughing, chest discomfort, and trouble sleeping or fatigue. (Ex. R, Symptoms of Bronchitis, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 280.)
8. Symptoms of sinusitis include runny nose, stuffy nose, and ear pain. (Ex. S, Symptoms of Chronic Sinusitis, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 281.)
9. Symptoms of rhinitis include runny nose, stuffy nose, and ear pain. (Ex. T, Symptoms of Rhinitis, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 283.)
10. Symptoms of chronic nasopharyngitis include runny nose, stuffy nose, and ear pain. (Ex. U, Symptoms of the Common Cold, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 277.)
11. Symptoms of GERD include heartburn and indigestion, regurgitation of food or sour liquid, chest pain, dry cough and hoarseness or sore throat. (Ex. V, Symptoms of GERD, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 287.)
12. Symptoms of gastritis include indigestion, vomiting, nausea, and a feeling of fullness in the upper abdomen. (Ex. W, Symptoms of Gastritis, Mayo Clinic.)
13. Symptoms of sleep apnea include loud snoring, abrupt awakenings with shortness of breath, insomnia, and headaches. (Ex. X, Symptoms of Sleep Apnea, Mayo Clinic; Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 286.)

III. PLAINTIFF DISCOVERS HIS ALLEGED INJURIES BY 2003.

14. Plaintiff's Response to Defendants' Discovery Demands states that his symptoms of [REDACTED] (Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 277-285.)
15. Plaintiff's Response to Defendants' Discovery Demands further states that his symptoms of [REDACTED] (Id. at 286.)
16. Plaintiff's Response to Defendants' Discovery Demands further states that his symptoms of [REDACTED] (Id. at 287.)
17. Plaintiff's Responses to Defendants' Discovery Demands were verified under penalty of perjury by the plaintiff. (Ex. F, Pl.'s Resp. to Defs.' Discovery Demands at 306.)
18. At his deposition, Plaintiff testified that between a year and a year and a half after he completed his 9/11-related work he experienced the following symptoms: [REDACTED]

[REDACTED] (Ex. I, 8/28/13 Zygmunt Dep. Tr. at 170:7-171:13.)

19. Plaintiff testified that he first sought treatment for the following symptoms in 2003:

[REDACTED] (*Id.*)

20. Plaintiff further testified that [REDACTED] (*Id.* at 175:10-23.)

21. In May 2002, Plaintiff worked in Groton, Connecticut at a military base. (Ex. G, 10/11/13 Zygmunt Dep. Tr. at 21:19-23:9.)

22. Plaintiff testified that in the two months prior to working in Groton, he went on unemployment in order to improve his health. (*Id.*)

23. Plaintiff testified that after completing his 9/11 related work he [REDACTED] (*Id.*)

24. Plaintiff testified that he continued to experience these symptoms when he began work at the military base in Groton. (*Id.*)

25. Plaintiff testified that during his 9/11 related work, he [REDACTED] (*Id.* at 99:19-101:5.)

26. Plaintiff testified that he also [REDACTED] (*Id.* at 170:22-171:17.)

27. A letter to Plaintiff from Brandi K Ross-Douglas, M.D., dated October 21, 2003, summarizing the findings of his March 7, 2003 medical evaluation through the World Trade Center Worker Volunteer Medical Screening Program states that Plaintiff complained of, or reported, the following symptoms at that evaluation: [REDACTED] (Ex. H, WTC Screening Program Letter at 000002.)

28. In that same letter, Dr. Ross-Douglas states that [REDACTED] (*Id.*)

29. In that same letter, Dr. Ross-Douglas states that [REDACTED] (*Id.* at 000003.)

30. On his signed workers' compensation form, dated November 8, 2003, Plaintiff listed the following under the "Nature and Extent of Physical Injury/Illness" field: [REDACTED] (Ex. J, Workers Compensation Form.)

31. On Plaintiff's medical questionnaire dated December 8, 2003 and signed by Rafael De la Hoz, M.D., Plaintiff reported that [REDACTED]

[REDACTED] (Ex. L, WTC Screening Program Medical Questionnaire at 000291-294.)

32. In that same questionnaire, Plaintiff reported that [REDACTED]

[REDACTED] (*Id.* at 000291-293.)

33. A "Treatment Plan Review" from Saint Mark's Place Institute for Mental Health, Inc. dated August 7, 2004, and signed by Plaintiff states [REDACTED]

[REDACTED] (Ex. K, St. Mark's Treatment Plan Review.)

IV. PLAINTIFF COMMENCES THIS ACTION ON JANUARY 23, 2009.

34. Plaintiff filed his initial Complaint on January 23, 2009. (Ex. N, Zygmunt Compl.)

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Dated: November 6, 2013
New York, NY

/s/ Lee Ann Stevenson

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